

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
\_\_\_\_\_ Division

In re:

)

)

)

Case No.

)

Chapter

Debtor

**NOTICE OF OBJECTION TO PROOF OF CLAIM NUMBER 9**

\_\_\_\_\_ has filed papers with the court to \_\_\_\_\_.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to grant the relief sought in the motion (or objection), or if you want the court to consider your views on the motion (or objection), then on or before \_\_\_\_\_, you or your attorney must:

- ☐ File with the court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013-1(H)]. If you mail your request for hearing (or response) to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

Clerk of Court  
United States Bankruptcy Court

\_\_\_\_\_  
\_\_\_\_\_

You must also mail a copy to:

- ☐ Attend a hearing to be scheduled at a later date. You will receive separate notice of hearing. **THE DEBTORS HAVE REQUESTED THAT THE COURT SET A HEARING ON THIS MATTER.**

- ☐ Attend the hearing on the motion (or objection) scheduled to be held on \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_ m. at United States  
Bankruptcy Court, \_\_\_\_\_  
\_\_\_\_\_.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: \_\_\_\_\_

Signature, name, address and telephone number  
of person giving notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Virginia State Bar No. \_\_\_\_\_  
Counsel for \_\_\_\_\_

Certificate of Service

I hereby certify that I have this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, mailed or hand-delivered a true copy of the foregoing Notice of Motion (or Objection) to the parties listed below or on the attached service list.

\_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

|                    |   |                           |
|--------------------|---|---------------------------|
| IN RE:             | ) |                           |
|                    | ) | CHAPTER 13                |
| JAMY M. VARONA     | ) | CASE NO.: <u>07-71761</u> |
| DANIELLE D. VARONA | ) |                           |
| DEBTORS            | ) |                           |
| _____              | ) |                           |

JAMY M. VARONA  
DANIELLE D. VARONA  
Objecting Parties

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC  
SUCCESSOR AND ASSIGNEE OF  
SEARS NATIONAL BANK  
Claimant  
\_\_\_\_\_

**OBJECTION TO PROOF OF CLAIM NUMBER 9**

COME NOW, the debtors, by counsel, and object to Claim Number 9 filed by Portfolio Recovery Associates, LLC, successor to and assignee of Sears National Bank, an unsecured claim in the amount of \$3,6829.29 filed on September 13, 2007. In support of their objection, the debtors would state as follows:

1. The debtors filed their Chapter 13 case on August 13, 2007.
2. The debtors filed their Chapter 13 Plan on August 21, 2007.
3. Portfolio Recovery Associates, LLC filed its proof of claim on

September 13, 2007 in the amount of \$3,629.29, noting that the debt was

Thomas B. Dickenson  
Counsel for the Debtor  
VSB No.: 26744  
1170 Lexan Ave., Suite 203  
Norfolk, VA 23508  
757-489-1300 – tel  
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tom@dickensonlaw.com - email

incurred on November 1, 1997, almost ten years ago; with a last payment date of May 16, 2000, more than seven years ago; and a charge-off date of March 4, 2001, more than six years ago. Portfolio Recovery purchased this account from Sears National Bank on April 25, 2002, more than five years prior to the Chapter 13 filing date.

4. A careful pre-petition review of the debtors' credit reports did not show any judgments against the debtors in favor of the current creditor or its assignor, nor did the credit reports show any listing whatsoever of this claim, by Portfolio Recovery Associates, LLC, by Sears National Bank or by any other creditor name in the approximate same dollar amount.

5. The face of the proof of claim form as filed by Portfolio Recovery leaves item number 3 "If court judgment, date obtained" blank.

6. The applicable statute of limitations on collection actions in Virginia is, at most, five years and has not ever been tolled until the filing of the present bankruptcy case on August 13, 2007. Accordingly, the statute of limitation on this potential claim has long since run out and the claim is time barred and unenforceable.

7. The proof of claim filed herein was not filed in good faith and is fraudulent on its face.

WHEREFORE, Jamy M. Varona and Danielle D. Varona, by counsel, respectfully request that the court deny the claim of Portfolio Recovery Associates, LLC and that the Court award them sanctions, damages and

attorneys fees for the prosecution of this objection and that such other relief be granted as may be appropriate.

JAMY M. VARONA  
DANIELLE D. VARONA

Dated: 9/19/07

By /s/ Thomas B. Dickenson  
OF COUNSEL

Thomas B. Dickenson  
Counsel for the Debtor  
VSB No.: 26744  
1170 Lexan Ave., Suite 203  
Norfolk, VA 23508  
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### **CERTIFICATE OF SERVICE**

I, Thomas B. Dickenson, do hereby certify that on the 19<sup>th</sup> day of September, 2007 I mailed a true copy of the foregoing Objection to Claim to Portfolio Recovery Associates, LLC, ATTN: Dolores Garcia, Lead Bankruptcy Specialist, PO Box 41067, Norfolk, VA 23541, Frank J. Santoro, Trustee, 1435 Crossways Blvd., Ste 301, Chesapeake, VA 23320, Chapter 13 Trustee and to Kenneth Whitehurst, Assistant U.S. Trustee, Federal Building, Room 625, 200 Granby Street, Norfolk, VA 23510.

/s/ Thomas B. Dickenson  
Thomas B. Dickenson

Thomas B. Dickenson  
Counsel for the Debtor  
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| United States Bankruptcy Court EASTERN DISTRICT OF VA  |  | PROOF OF CLAIM                   |
|--|--|----------------------------------|
| Name of Debtor MITCHELL; DANIELLE D XXX-XX-8763  | Case Number 0771761<br>Court code VANO   |                                  |
| NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.  |  |                                  |
| Name of Creditor (The person or other entity to whom the debtor owes money or property):<br>Portfolio Recovery Associates, LLC Successor and assignee of:<br>SEARS NATIONAL BANK ()  | <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.<br><input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.<br><input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.  |                                  |
| Name and address where notices should be sent: Send payments to:<br>PRA Correspondence Address Information PRA Payment Address Information<br>Portfolio Recovery Associates, LLC. Portfolio Recovery Associates, LLC.<br>POB 41067 PO Box 12914<br><br>NORFOLK, VA 23541 NORFOLK, VA 23541<br>877-829-8298 877-829-8298  | This space is for Court Use Only   |                                  |
| Account or other number by which creditor identifies debtor:<br>0361344756024  | Check here if this claim: <input type="checkbox"/> replaces <input type="checkbox"/> amends<br>A previously filed claim, dated:  |                                  |
| <b>1. Basis for Claim</b><br><input type="checkbox"/> Goods sold<br><input type="checkbox"/> Money loaned<br><input type="checkbox"/> Personal injury/wrongful death<br><input type="checkbox"/> Taxes<br><input checked="" type="checkbox"/> Other <u>Credit Card</u>   | <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)<br><input type="checkbox"/> Wages, salaries, and compensation (Fill out below)<br>Last four digits of SSN # _____<br>Unpaid compensation for services performed<br>from _____ to _____   |                                  |
| <b>2. Date debt was incurred:</b> 11/1/1997  | <b>3. If court judgment, date obtained:</b>  |                                  |
| <b>4. Total Amount of Claim at Time Case Filed:</b> \$3,629.29<br>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.<br><input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.  |  |                                  |
| <b>5. Secured Claim.</b><br><input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).<br>Brief Description of Collateral:<br><input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle<br><input type="checkbox"/> Other _____<br>Value of Collateral: _____<br>Amount of arrearage and other charges <u>at time case filed</u> included in secured claim, if any _____  | <b>7. Unsecured Priority Claim.</b><br><input type="checkbox"/> Check this box if you have an unsecured priority claim<br>Amount entitled to priority \$ _____<br>Specify the priority of the claim:<br><input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).<br><input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).<br><input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).<br><input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).<br><input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).<br><input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a-____).<br><i>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i> |                                  |
| <b>6. Unsecured Nonpriority Claim</b> \$3,629.29<br><input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.  |  | This Space Is for Court Use Only |
| <b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.<br><b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.<br><b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. |  |                                  |
| Date<br>9/13/2007  | Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):<br><br><u>/s/ Dolores Garcia</u><br><br>Dolores Garcia, Lead Bankruptcy Specialist  |                                  |

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



## **SUPPLEMENTAL ACCOUNT SUMMARY**

### **BANKRUPTCY INFORMATION:**

Case #: 0771761  
Filing date: 8/13/2007  
Chapter: 13

### **BORROWER INFORMATION:**

MITCHELL; DANIELLE D  
3537 RAINTREE RD

VIRGINIA BEACH, VA 23452

XXX-XX-8763

### **CREDITOR INFORMATION:**

Portfolio Recovery Associates, LLC., successor in interest to SEARS NATIONAL BANK / (). The account was purchased from SEARS NATIONAL BANK on 4/25/2002.

### **ACCOUNT INFORMATION:**

Acct. #: 0361344756024  
Acct. Type: Credit Card  
Date of Loan: 11/1/1997  
Charge off Date: 3/4/2001  
Last Payment Date: 5/16/2000  
Balance at Filing Date: \$3,629.29